

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF AND APPENDIX FOR APPELLEE

**United States Court of Appeals for the
District of Columbia**

JANUARY TERM 1943

No. 8392

WALLACE H. WELCH AND ERMA G. WELCH, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA**

EDWARD M. CURRAN,
United States Attorney.
BERNARD MARGOLIUS,
Assistant United States Attorney.
CHARLES B. MURRAY,
Assistant United States Attorney.

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United States Court of Appeals for the District of Columbia

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No. 8392

WALLACE H. WELCH AND ERMA G. WELCH, APPELLANTS

vs.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA*

BRIEF AND APPENDIX FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

The appellants take this appeal from a judgment of sentence of ten to thirty-two months imposed on them after they were convicted on the second of a two-count indictment which second count charged that they attempted to compel, induce, entice, and procure one Miriam N. Eirich to engage in prostitution. The points raised are that the directed acquittal on the first count, which charged the completed offense as distinguished from the attempt, disposed of the second, or attempt count; that the evidence did not justify the conviction; and that a mistrial should have been declared the day the case went to the jury because of publicity given in the press that day and the day before to the criminal record of the defendants, one of whom did not take stand and whose record therefore was not in evidence.

The facts in the case are as follows: The appellants, natives of Johnstown, Pennsylvania, were living in Washington in 1942.

The complaining witness, Miriam Naomi Eirich, lived in Johnstown, and knew both appellants. In May 1942 Miss Eirich received a letter from the Veterans' Administration in Washington advising her that she would receive a telegram within the next few days to report for duty in Washington. She wrote her friend Mrs. Welch inquiring about a room in Washington, and Mrs. Welch replied that she had one available. Miss Eirich decided to come to Washington immediately, and did so on May 4, 1942, accompanied by her father. They went to the Welch apartment. At that time Mr. Welch was in a hospital in Virginia. Miss Eirich and her father stayed at the Welch apartment that night, and next day he returned home. The Welch apartment had a bedroom in which were a double bed and a studio couch; a kitchen; and a bath room. Miss Eirich slept with Mrs. Welch while Mr. Welch was away. Miss Eirich, not having heard from the Veterans' Administration, got a job at a restaurant. In the first part of June, 1942, Miss Eirich went to work at the Veterans' Administration, and at about this time Mr. Welch returned to the apartment, and thereafter Miss Eirich slept on the studio couch, which was screened off from the rest of the bedroom (Appellee's Appendix 32).

Miss Eirich testified that both defendants encouraged her to become a prostitute (Appellee's Appendix 33). They told her that she could earn extra money by having dates after office hours with men, and said they would see that she was taken care of so that nothing could happen to her. She told them she would not do anything like that, to which they replied that she would have to do that to get along in Washington, and that she would discover that wherever she went to live she would have to make dates with men and earn extra money. Witness told them on several occasions that she would rather go back to Johnstown than to engage in prostitution. They insisted that she would have to take up prostitution, stating that most of the government girls earned extra money at night doing these things. They told her they knew of a house near Dupont Circle where they would take her to get dates if she would go with them. When they found that this did not appeal to her they asked her to go to Florida with them, stating that it would not cost her any money as they could take her to places where she

could get a lot of money having relations with men, and that they would see that she was taken care of (Appellee's Appendix 33). During the period of time that they were persuading the witness to engage in prostitution, the appellants, both nude, gave physical exhibitions in her presence to show her how these things were accomplished (Appellee's Appendix 33).

On one occasion while Mrs. Welch was away from the apartment and the witness was asleep on the studio couch she awakened to find the defendant Wallace Welch having intercourse with her. When Mrs. Welch returned to the apartment, the witness told her what had happened, and Erma Welch prepared a solution and assisted witness in taking a douche. At that time both Wallace Welch and Erma Welch told the witness that she would have to do these things in order to get along (Appellee's Appendix 33-34). Witness is twenty years of age, having been born in Johnstown, Pennsylvania, on March 19, 1922 (Appellee's Appendix 32).

On Saturday, June 27, 1942, witness told some girl friends what was happening at the Welch apartment, and they insisted that she not go back there. From then on she lived at a girl friend's room. Nearly a month later, on July 21, 1942, Wallace Welch came to her place of employment at the Veterans' Administration to see her and witness got her supervisor and a guard to go with her to see Wallace Welch. He told her that he had some letters for her at his home. The supervisor told him to send the letters to the witness at the Veterans' Administration. Welch stated that if witness wanted the letters she would have to come to the apartment herself or else send a policeman to get them. On the day of this occurrence the witness for the first time made a complaint to the police (Appellee's Appendix 34). Her reasons for not complaining before, she explained on direct examination, were that Wallace Welch had threatened her life if she talked; that he had told her that if she did complain it would be her word against his and his wife's, and nobody would believe her; and that she was afraid she would lose her job if this matter came to the attention of the authorities (Appellee's Appendix 34).

On cross-examination the witness admitted that she did not complain to her father, and explained that she was afraid of

what he might do. She stated that she did not consent to the act of intercourse with Wallace Welch, but admitted that she continued to live at the house after that occurrence, explaining that the couch on which she slept was screened from the rest of the bedroom. She said she did not call her Congressman because she did not know the procedure. She stated that she had never been taken to the house near Dupont Circle. She admitted further that she was never introduced to any men and there was no discussion relative to sharing her earnings from prostitution with the appellants. She denied having had an abortion performed upon herself in Johnstown, Pennsylvania. She testified that she had never had intercourse in her life and stated in conclusion on cross-examination that she had a brother who was in Pearl Harbor on December 7, 1941, another in the Army overseas, and a third on convoy duty with the Navy in the Atlantic (Appellee's Appendix 35).

The girl's supervisor at the Veterans' Administration, Miss Clare M. Gumaer, testified that on July 21, 1942, Wallace Welch came to the Bureau and requested to see the complaining witness. The girl thereupon became frightened and nervous and upon her request (that is, the request of the complaining witness) several guards of the building were obtained to accompany them. When they went downstairs to see Wallace Welch he asked the girl what time she would get off work and what entrance she would leave from, and stated that he wanted to take her back to his home. Miss Gumaer told Welch that Miss Eirich was not going back. After some discussion Welch left, stating that there were some papers and belongings of the girl's at his home and that if she did not come back to get them herself she would have to send a police officer (Appellee's Appendix 35).

At the conclusion of the evidence for the government the defendant moved for a directed verdict of acquittal, which was denied and exception noted. Thereupon the defendants put on their evidence. Two occupants of the Welch apartment building, one of them the landlady, testified that they lived there during the period of time in question and that there was no disturbance there, and Miss Eirich, whom they saw from time to time, made no complaint to them. A physician who

had examined Miss Eirich at the request of the police department testified for the defendant and told about his examination, and concluded that he could not say whether she had ever had intercourse before (Appellee's Appendix 36).

Wallace Welch testified, and categorically denied everything that the girl had testified to about attempts by himself and by his wife to persuade Miss Eirich to engage in prostitution. He stated that the girl had told him that she had had intercourse with her boy friend in Johnstown and had become pregnant by him and had had an abortion performed, and that because of this experience she "would make all men suffer," and this was apparently the reason she was bringing these charges against him and his wife. His account of his visit to the place of the girl's employment was that he went there to see her about a letter she had written to someone in Johnstown. He stated he did not speak with the girl but spoke with her supervisor.

Erma Welch did not testify. At the conclusion of the evidence for the defense the motion for directed verdict was renewed and again denied, and exception noted. The Court adjourned overnight. That evening a Washington newspaper carried a story of the trial which included reference to the criminal records of both defendants, arrests as well as convictions (Appellee's Appendix 23). Next morning another newspaper did the same thing (Appellee's Appendix 24). When Court reconvened counsel for the defendant called this fact to the attention of the Court, and moved for a mistrial. Counsel for the government granted that if it should appear that any member of the jury had read or otherwise become acquainted with the contents of any article about the trial then a mistrial should be declared, and the Court said he would promptly do so if that fact appeared. The jury was sent to the jury room and a marshal was sent to get any newspaper that might be in possession of any juror, and brought back two copies of that morning's issue of a newspaper which carried a story of the trial and told of the criminal record of Mrs. Welch. Thereupon the jurors were recalled to the Court room and questioned, and disclaimed by their silence having become acquainted by reading or otherwise with the contents of any newspaper article about the case. The Court then overruled the motion of de-

fense counsel to declare a mistrial, and exception was noted to that action. The case went to the jury and they convicted both defendants on count 2, and acquitted by direction on count 1 of the indictment.

STATUTES

D. C. Code, § 22-2705 [6:179]:

Pandering.—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

That any person who, within the District of Columbia shall place * * * any female * * * or compel, induce, entice, or procure or attempt to compel, induce, entice or procure her to engage in prostitution * * * shall be punished * * * .

SUMMARY OF ARGUMENT

1. The directed verdict of acquittal on the first count of the indictment charging that the appellants unlawfully did compel, induce, entice and procure the complaining witness to engage in immorality did not constitute an acquittal on the second count of the indictment which charged that they unlawfully attempted to do so. The only issue of fact the jury passed upon was the attempt charged in the second count.

2. There was sufficient evidence at the conclusion of the government's case to justify conviction of both defendants, and even more as to one of them after the defense had rested. What they did, according to the evidence, was to try by word of mouth and by actual demonstration to persuade the girl to undertake the life for the gain involved. That was certainly an attempt to "induce" and "entice" her. The case is different from other fact situations where words amount to no more than preparation or conspiracy and fall short of attempt. Here the words were overt acts and constituted an attempt. The evidence for the defense was a flat denial of the government's testimony, which was what the plea of not guilty was, and in addition brought into issue the credibility not only of the girl, but of her supervisor, who corroborated her as to the incident at the Veterans' Administration.

3. The trial court, after determining by the best method known to the law—that is by inquiry under oath of the persons possessing knowledge of the facts—that no juror had become acquainted with the contents of newspaper articles regarding the case, had no choice but to allow the trial to proceed.

ARGUMENT

I

The verdict of guilty on the first count did not prevent the court from leaving the issue of guilt on the second count to the jury, nor nullify the jury's finding.

At the conclusion of the evidence for both sides, the court stated to counsel that he did not think that the evidence warranted the submission to the jury of the first count which charged that the defendants compelled, induced, enticed and procured the girl to engage in prostitution and stated that he would direct a verdict of not guilty on that count. The attorney for the defendant then stated that he did not think the evidence warranted submission to the jury on the second count as to Erma Welch which charged an attempt to do those things. The court disagreed with this and stated that he would submit that count, to which ruling exception was taken (Appellee's Appendix 39).

No suggestion was made to the court before verdict that there was any inconsistency in what the court was doing and the point now argued in appellants' brief was raised for the first time in a motion in arrest of judgment filed after conviction (Appellee's Appendix 21).

Inconsistency in a verdict is not ground for setting it aside. *American Medical Association v. United States*, App. D. C. No. 7929-30, June 15, 1942. Thus, where a defendant was charged in three counts, respectively, with maintaining a nuisance, selling liquor, and possessing liquor, and the nuisance was provable only by proof of the selling and possession of liquor, the conviction on the nuisance count was not set aside because the jury also acquitted on the other counts which were likewise left with it on fact issues. *Dunn v. United States*, 284 U. S. 390, 393-4 (1932).

An indictment may charge an offense in one count and an attempt to commit that offense in another, § 557, Title 18 U. S. C.; *Welsh v. United States*, 267 Fed. 819 (C. C. A. 2d). If the appellant had been charged in one count only and had been acquitted, he could not thereafter be charged with an attempt, as the first acquittal would have disposed of the offense charged and all lesser offenses necessarily included. Section 565, Title 18 U. S. C. But the situation is different where alternative counts are included in the same indictment. "However, if a defendant is acquitted upon one count of an indictment containing alternative counts, it does not follow that the jury found all of the elements essential to the offense stated in that count absent, but merely that they found absent the element or elements distinguishing the offense stated in that count from the offense stated in the alternative counts." *Gozner v. United States*, 9 F. (2d) 603, 605 (C. C. A. 6th). If that is true where both counts are submitted to the jury on fact issues, it would seem to be more so where one of the counts is disposed of by peremptory verdict.

II

The evidence was sufficient to justify the conviction.

At the conclusion of the government's case and again at the conclusion of the defendant's case, counsel moved for a directed verdict and to the refusal of the court to grant his motions exceptions were noted.

It is argued that the evidence did not justify submission of the case to the jury. The argument seems to be that mere words are not enough in any case to constitute an attempt but amount only to preparation. Even if this were true it does not dispose of the instant case because in this case there was evidence of acts, that is, physical exhibitions looking to the same end as the words.

However, words may amount to an attempt and may even amount to a completed offense, depending on what kind of offense is under consideration. The offense charged here was an attempt to "compel," "induce," "entice," and "procure" a female to engage in prostitution. If any one of these things was attempted the charge was made out.

"Induce" means to bring about, to effect, to cause, to influence to an act or course of conduct, to lead by persuasion, to prevail on, to persuade, to move by persuasion or influence. *Rahke v. United States*, 81 N. E. 584, 586, 168 Ind. 615.

"Entice" means to allure to ill, to attract, to seduce, to coax. (It may import initial and wrongful effort.) *Smith v. Mitchell*, 221 P. 964, 966, 64 Calif. App. 463.

"Induce" means to draw on by exciting hope or desire. *Bryant v. State*, 94 S. E. 856-7, 21 Ga. App. 668. To draw on by blandishments or hopes, to decoy, to tempt to seduce, to coax. It implies that the person yields as a result. *United States v. Ancarolo*, 1 Fed. 676, 683. The two words "entice" and "induce" have been held to be synonymous as used in a pandering statute. *People v. DeJoy*, 189 Ill. App. 361, 362.

It is quite obvious from a consideration of these definitions that inducement and enticement not only can be but ordinarily are accomplished by the use of words. As to the male appellant in this case, there is some evidence that he attempted to compel her. He had succeeded in putting her in fear to judge from her reactions when he called for her at the Veterans' Administration. But if the girl's story is to be believed at all—and it was the jury's function to pass upon that—there can be no question of doubt that both appellants—by blandishments, by holding out hopes of gain, by breaking down moral reluctance and resistance through assurances as to how other people acted, as well as by demonstrations of appellants' own lack of such restraint—attempted by every means short of physical compulsion, to procure this girl to engage in prostitution. So heinous are such attempts viewed by Congress that a penalty equal to that for accomplishment is provided. (22-2705, *D. C. Code*, 1940).

III

The publicity in the papers did not call for a mistrial, it not appearing that the jurors knew of it.

When court adjourned on the afternoon of September 23, 1942, both sides had closed their case. That evening the *Washington Daily News* printed an article about the trial, which stated in part as follows:

The defendants, according to police records, common-law husband and wife, are charged with compelling the girl who lived with them to engage in prostitution. Erma Welch, 36, until recently worked in a Veteran Administration where many girls were stationed. She previously has been convicted on four counts of soliciting prostitution and is married to a Louisiana convict, police say. Wallace Welch, 43, has a police record for disorderly conduct and driving while drunk (Appellee's Appendix 23).

The following morning the Washington Herald wrote about the trial. The article can fairly be described as inflammatory against the defendants and recited as to Mrs. Welch that she was the common-law wife of the co-defendant, had been arrested thirteen times on charges of prostitution, and had six aliases (Appellee's Appendix 24). When court reconvened next morning, the attorney for the appellants called these facts to the court's attention. The jury was sent to the jury room and a marshal was sent to get from them any newspapers they might have. The marshal returned with two copies of that morning's Washington Herald. The attorney for the appellants moved for a mistrial. Government counsel stated that if it should appear that any juror had become acquainted with the content of the articles a mistrial ought to be declared. The court stated he would promptly declare one if such fact did appear. Thereupon the jurors were brought into the court room and the court questioned them. They were asked as a group whether they had read any articles about the case or the trial, particularly in the two newspapers mentioned. No juror responded to these questions. They were asked whether any juror had heard about any such articles, particularly any article in the Washington News or the Washington Herald. One member of the jury stated that he had been told that there was an article in the Washington News on the day before, but he had not read it, and had not been told its contents, and specifically stated he did not know what was in the article (Appellee's Appendix 38). The court then overruled the motion for a mistrial and an exception was noted. It does not appear that the

attorney for the appellants at that time or at any other time requested that any additional or different thing be done in the way of investigation or inquiry to determine the facts of the matter.

In the brief for the appellants the conduct of the police in giving this information to the press is condemned. Granting it may be worthy of condemnation, it is beside the point how the press got the information and the only concern of the trial court was whether prejudicial information about the defendants had gotten to the jury in any way except by sworn testimony from the stand in the trial. That the trial court addressed itself to that question earnestly and sought in every way to protect the rights of the defendants on trial is frankly admitted in the appellants' brief. Having done that, what was he to act upon but the result of that inquiry? The result of the inquiry being that no juror had learned prejudicial information, there was nothing for the court to do but to allow the trial to proceed.

In this respect the instant case is to be distinguished from the case of *Kleindienst v. United States*, 48 App. D. C. 190, 198 (1918). In that case it appeared beyond dispute that members of a panel from which was to be selected the jury to try Kleindienst for adultery had already heard evidence in a prosecution against one Margaret Stout for conducting a bawdy house, in which the name of Kleindienst as a frequenter of that house was prominently and often mentioned. On appeal from the trial court's refusal to grant the motion of the defendant to grant a continuance so that trial could be had before another jury, the government argued that the appellant had not fully protected his rights below, and it was suggested that he might have questioned the prospective jurors whether their having heard the evidence in the Stout case would prejudice them against Kleindienst. To this suggestion this Court said (48 App. D. C. 198) "Had any juror insisted that he was not prejudiced, his answer would have been inconsistent with human experience." But here the question was not whether the matter would prejudice the jurors, but whether the jurors had heard the prejudicial matter.

CONCLUSION

It is respectfully submitted that the verdict of this jury was reached on a charge properly before it, amply supported by evidence and not beclouded by prejudice from outside sources. The resulting judgment, therefore, should be affirmed.

Respectfully,

EDWARD M. CURRAN,
United States Attorney.

BERNARD MARGOLIUS,
Assistant United States Attorney.

CHARLES B. MURRAY,
Assistant United States Attorney.

TRANSCRIPT OF RECORD

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA**

OCTOBER TERM, 1942

No. 8392—Special Calendar

**WALLACE H. WELCH AND ERMA G. WELCH,
APPELLANTS**

VS.

UNITED STATES OF AMERICA, APPELLEE

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA**

FILED JANUARY 16, 1943

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UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

JANUARY TERM, 1943

No. 8392

WALLACE H. WELCH AND ERMA G. WELCH,
APPELLANTS

VS.

UNITED STATES, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

United States Court of Appeals for the District of Columbia.
Filed Jan. 16, 1943. Joseph W. Stewart, clerk.

District Court of the United States for the District of Columbia
Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH AND ERMA G. WELCH

UNITED STATES OF AMERICA,
District of Columbia, ss:

United States Court of Appeals for the District of Columbia.
Filed Jan. 16, 1943. Joseph W. Stewart, clerk.

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

(15)

In the District Court of the United States for the
District of Columbia

Clerk's statement of docket entries to accompany duplicate
notice of appeal to the Court of Appeals.

United States Court of Appeals for the District of Columbia.
Filed, Nov. 9, 1942. Joseph W. Stewart, Clerk.

Criminal No. 70287

UNITED STATES OF AMERICA

vs.

WALLACE H. WELCH, ERMA G. WELCH

Charge, Vio. Sec. 2705, Title 22, D. C. Code

1942

Aug. 10—Each: Presentment and indictment filed.

14—Each: Appearance of James J. Laughlin entered.

25—Each: Arraigned, Plea Not Guilty.

Each: 5 days, etc.

Sept. 22—Each:

Jurors sworn on voir dire.

Jury sworn and respited until tomorrow.

23—Each: Trial resumed, same jury, respited until to-
morrow.

24—Each: Trial resumed, same jury, Verdict each Not
Guilty by direction of the Court on Count One,
Guilty as indicted on Count Two.

Each:

Defendant remanded to Washington Asylum
and Jail.

Defendant's Prayers filed, 1 thru 8.

26—Each:

Motion in arrest of judgment filed.

Motion for new trial filed.

28—Each: Amendment to motion for new trial and
affidavit filed.

Oct. 12—Each: Motion in arrest of judgment and motion for
a new trial heard and submitted.

Nov. 6—Each: Motion for a new trial and in arrest of judgment argued and overruled.

Each: Sentenced to Imprisonment For Period of Ten (10) months to Thirty-two (32) months.
Judgment Signed (Bailey, J.)

9—Each: Notice of appeal in forma pauperis filed.

Date November 9 A. D. 1942.

Attest:

[SEAL]

CHARLES E. STEWART,

Clerk.

By MARGARET L. BOSWELL,

Deputy Clerk.

NOTE.—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in Rules 7, 8, and 9, of Supreme Court U. S.

In the District Court of the United States for the District
of Columbia

Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH AND ERMA G. WELCH

United States Court of Appeals for the District of Columbia.
Filed Nov. 9, 1942. Joseph W. Stewart, clerk.

AFFIDAVIT IN FORMA PAUPERIS

Now comes the defendants Wallace H. Welch and Erma G. Welch who are citizens of the United States and because of their poverty they are unable to prepay the costs of prosecuting their appeal or give security for same and ask leave to proceed in forma pauperis.

WALLACE H. WELCH.

Wallace H. Welch.

ERMA G. WELCH.

Erma G. Welch.

Subscribed and sworn to before me this 9th day of November, 1942.

LILLIAN A. TRAMMELL,
Notary Public.

ORDER OF COURT

It is this 9th day of November 1942 ordered that the above named defendants be and they hereby are permitted to prosecute their appeals to conclusion without prepayment of costs or fee.

[SEAL]

(S) JENNINGS BAILEY,
Justice.

A true copy.

Test:

CHARLES E. STEWART,
Clerk.

By MARGARET T. QUICK,
Deputy Clerk.

G. J. No. 26387. Criminal No. 70287. Violation Section 2705, Title 22, D. C. Code.

Filed in open court Aug. 10, 1942. Charles E. Stewart, clerk.

District Court of the United States for the District of Columbia

Holding a Criminal Term. July Term, A. D. 1942

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one Wallace H. Welch and one Erma G. Welch, on, to wit, the thirtieth day of June 1942, and at the District of Columbia aforesaid, feloniously and unlawfully did compel, induce, entice, and procure a certain female, namely, one Miriam N. Eirich, to engage in prostitution; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one Wallace H. Welch and one Erma G. Welch, on, to wit, the thirtieth day of June 1942, and at the District of Co-

lumbia aforesaid, feloniously and unlawfully did attempt to compel, induce, entice, and procure a certain female, namely, one Miriam N. Eirich, to engage in prostitution; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

EDWARD M. CURRAN,
*Attorney of the United States in
and for the District of Columbia.*

A true bill:

W. HAYDEN COLLINS,
Foreman.

District Court of the United States
for the District of Columbia

Tuesday, August 25, 1942

The Court resumes its session pursuant to adjournment: Mr.
Justice MATTHEW F. McGUIRE, Presiding.

* * * *

Criminal No. 70287

Come as well the Attorney of the United States, as the defendants in proper person, each in custody of the Superintendent of the Washington Asylum and Jail and each by his attorney, James J. Laughlin, Esquire; whereupon each defendant being arraigned upon the indictment, the reading whereof he specifically waives, pleads not guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like; and thereupon each defendant is granted leave within five days to withdraw said plea and demur to, or move to quash the said indictment, or otherwise plead as he may be advised.

District Court of the United States
for the District of Columbia

Thursday, September 24, 1942

The Court resumes its session pursuant to adjournment: Mr.
Justice BAILEY, Presiding.

* * * *

Criminal No. 70287

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon said jury, upon their oath, and by direction of the Court, say that each defendant is not guilty on count one of the indictment, but guilty in manner and form as charged in count two of the indictment; and thereupon each defendant is remanded to the Washington Asylum and Jail.

In the District Court of the United States
for the District of Columbia

Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH, ET AL.

Filed Sept. 26, 1942. Charles E. Stewart, clerk.

MOTION FOR NEW TRIAL

The defendants through their counsel now move the Court to set aside the verdict and grant a new trial in this cause for the following reasons:

1. The verdict was contrary to the evidence.
2. The jury failed to heed the instructions of the court.
3. The improper activities of Officer Blick of the Police Department sabotaged the defense in this case and so inflamed the jurors that they could not deal impartially with the defendants.
4. The verdict of not guilty on the first count has disposed of this case.
5. And for such other reasons that will be brought to the attention of this Court when the motion is argued.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendants.

Service acknowledged:

BERNARD MARGOLIUS,
Assistant U. S. Attorney.

In the District Court of the United States
for the District of Columbia

Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH, ET AL.

Filed Sept. 26, 1942. Charles E. Stewart, clerk.

MOTION IN ARREST OF JUDGMENT

Now comes the defendants through their counsel and move the court to arrest the judgment in this cause inasmuch as an acquittal on the first count has disposed of this case and the conviction cannot stand on the second count inasmuch as the indictment was improperly drawn.

JAMES J. LAUGHLIN,
James J. Laughlin,
*National Press Bldg.,
Counsel for Defendants.*

Service acknowledged:

BERNARD MARGOLIUS,
Assistant U. S. Attorney.

In the District Court of the United States
for the District of Columbia

Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH, ET AL.

Filed September 28, 1942. Charles E. Stewart, Clerk.

AFFIDAVIT OF JAMES J. LAUGHLIN

DISTRICT OF COLUMBIA, ss:

James J. Laughlin, being first duly sworn on oath as required by law, deposes and says that he was counsel for defendants in the criminal trial before Justice Jennings Bailey on Septem-

ber 22, 23, and 24, 1942; that on the night of September 23, 1942, the reporter for the Washington Daily News telephoned him that he had obtained the information relating to the police record of defendant Erma G. Welch from Officer Blick of the Police Department; affiant advised said reporter that he was sorry that he had published that information since the *police* record was not admissible in evidence since the defendant Erma G. Welch had not taken the stand and would not take the stand and affiant informed said reporter that it was (affiant's) duty to bring the matter to the attention of Justice Bailey the following morning before the case was concluded; affiant says that an article was published in the Times Herald on Thursday morning, September 24, 1942, and said article also carried the police record; affiant says before court resumed on the morning of September 24th and while the jury was in the box he observed several jurors reading the Washington Times-Herald; affiant says further that while the matter was being discussed with the judge at the bench the jury was for a time taken to the jury room and kept together and that at the request of Mr. Margolius and affiant the deputy United States Marshall went to the jury room to take from the jurors newspaper they may have had in their possession and the deputy brought back a copy of the Washington Times Herald of September 24, 1942, and the said paper was examined by affiant in the presence of Justice Bailey and Mr. Margolius and it was found that the objectionable article was in said paper.

JAMES J. LAUGHLIN.

James J. Laughlin.

Subscribed and sworn to before me this 28th day of September 1942.

Charles E. Stewart, clerk, District Court of the United States for the District of Columbia. H. M. Hull, deputy clerk.

Cr. No. 70287

Filed Sept. 28, 1942. Charles E. Stewart, clerk.

[The Washington Daily News, Wednesday, September 23, 1942]

'VICE SCHOOL' VICTIM BREAKS DOWN ON STAND

The "vice school" trial, in which Wallace and Erma Welch are accused of forcibly teaching the ways of prostitution to a 20-year-old Government typist today enters its second session. The young Mennonite, who claims to be a victim of the accused couple, testified briefly yesterday, but while on the stand was shaking with sobs when Justice Bailey called a halt for the day.

The defendants, according to police records common-law husband and wife, are charged with compelling the girl who lived with them to engage in prostitution. Erma Welch, 36, until recently worked in a Veteran Administration section where many girls were stationed. She previously has been convicted on four counts of soliciting prostitution and is married to a Louisiana convict, police say. Wallace Welch, 43, has a police record for disorderly conduct and driving while drunk.

Lived With Couple

The alleged victim came to Washington from Youngstown, Pa., on the promise of a Government job. She lived here in the same room as the Welch couple. She had heard it was difficult to find a room in Washington.

But the job did not come thru immediately. So she took a job as waitress at a drive-in restaurant. Early in May she obtained a War Department position, and on week-ends continued to work at the restaurant. At night she slept on a couch in the Welch bedroom. She was separated from Mrs. Welch by a screen. Mr. Welch was at that time in a veterans' hospital.

On June 8, Mr. Welch, whom the girl calls "Bud," returned from the hospital. He slept in the same room.

The girl told the jury that soon after his return, Mr. Welch "made approaches at me, but I refused." She said that one night, however, she was forced into sexual relations.

She testified that when she protested, she was told, "You have to do things like that to get along in Washington."

On the following day she was nervous and could not stay at her job. But Mr. Welch attempted to compromise her repeatedly, she averred. The couple demonstrated the ways of a prostitute to her, she said, and told her they would arrange dates for her if she would do as they said.

They warned her not to leave because she would lose her job, she said, and that no one would believe her. She had no witnesses she said while there were two who would deny her story.

Friends Take Her In

Late in June she told her girl friends of her experiences, and they would not let her go back to the Welch residence at 1301 P-st nw, she testified.

Prosecutor Margolius asked her to go into more detail. She began but her voice faltered and she began to cry and the judge adjourned court for the day

Cr. No. 70287

[Times-Herald, Thursday, September 24, 1942]

LANDLORD DENIES URGING CAREER OF VICE ON GIRL

Threat for Refusal Related at Trial in District Court

In District Court this morning will be resumed the tale of a Government girl who has testified on two successive days that her landlord and his common-law wife attempted to force her into an after-working-hours life of vice.

She listened in the closing hour of yesterday's session as 43-year-old Wallace Welch told Justice Jennings Bailey and a jury of nine men and three women that "he was more like an older brother" to the 20-year-old Mennonite girl from Johnstown, Pa.

Defendant's Denial

Welch, in injured tones, denied all the girl's charges. He and his wife Erma, 36, did not attempt to advise her at all except to "put her money in the post office and not to take strange

taxicabs at night," he said. When arrested last July, Welch "didn't know what for," he testified.

He said that he had not attacked the girl as she lay sleeping, a direct denial of her testimony. He never threatened her, never argued with her, he said.

Often, he said, he would leave her alone in the one-room apartment in 1300 block P St., NW., so she "might have the privacy every girl should have," and go to visit neighbors, 'sometimes even to a beer joint'."

Girl Tells of Threat

The young brunette, garbed in plain skirt, plaid jacket and pink sweater, testified earlier that the Welches had made her watch them in indecencies designed to instruct her in a career of commercial vice.

Her Mennonite faith forbids attendance at movies, the theater or dances. She related her story in a clear, level voice, but broke down when she told of a brother who had been in the Pearl Harbor attack, unheard from since.

Spectators were visibly moved by her testimony, particularly when she repeated, "They put on two or three exhibitions a week, to show me things that nobody should do."

She said also that Welch told her "I'll get someone to do away with you if you scream. Lots of girls disappear in Washington."

Woman's Police Record

Mrs. Welch, who, according to police, has been arrested here 13 times on charges of prostitution, advised her that there was easy extra money in commercial vice, the girl said.

As it was brought out in court that the Welches are common-law man and wife, Mrs. Welch, for whom police have listed six aliases, was led sobbing from the courtroom.

The girl came to Washington for a Government job, she said. Jobs are easy to find, but rooms are not, so she moved in with the Welches at their one-room walk-up apartment. She had known Mrs. Welch's mother-in-law in Johnstown.

At first she worked as a waitress at a restaurant on Wisconsin Avenue, later getting a typist's job with the Veterans' Adminis-

tration. Her supervisor, who appeared on the witness stand yesterday, saw that the girl was nervous and unable to maintain the standard of work. Upon inquiry she learned the whole story and advised the worker to tell police.

Filed Sept. 23, 1942. Charles E. Stewart, clerk.

In the District Court of the United States for the
District of Columbia

Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH, ET AL.

Filed, Oct. 12, 1942. Charles E. Stewart, clerk.

AFFIDAVIT OF BUDD E. NOLAN

STATE OF NEW YORK, ss:

Budd E. Nolan being first duly sworn on oath as required by law deposes and says that he is a resident of New York, N. Y., and lives at 91 Payson Avenue; that he was in Washington, D. C., on business from September 22nd to September 25th, 1942, and that it was necessary that he confer with James J. Laughlin and that he contacted Mr. Laughlin on the morning of September 23, 1942, and was asked by Mr. Laughlin to come to the Courthouse and he would confer with him during the noon recess of the court as Mr. Laughlin was engaged in a criminal trial; that he went to the courthouse and remained during the day and returned with Mr. Laughlin to his office at the close of the day; that on the morning of September 24th he went to the courthouse and arrived in the courtroom of Justice Bailey about 9:50 A. M.; affiant observed that various members of the jury in the Welch case were reading the newspaper; affiant observed that one juror in the back row passed his newspaper to a juror in the front row and pointed to a certain article in said paper that the said juror desired the other juror to read; that after the second juror read the article and returned the paper to the other juror he made some com-

ment; affiant is unable to say what paper was read by the juror or what article was read.

BUDD E. NOLAN.

Budd E. Nolan.

Subscribed and sworn to before me this 10 day of October 1942.

HENRY IRVING BUNNELL,

Notary Public, D. C.

#4B658. Reg. #348. Comn. Expires 3/30/44.

District Court of the United States for the District of Columbia

Friday, November 6, 1942

The Court resumes its session pursuant to adjournment: Mr. Justice BAILEY, presiding.

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Criminal No. 70287

Come as well the Attorney of the United States, as each defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by their attorney, J. J. Laughlin, Esquire; and thereupon each defendant's motion for a new trial and in Arrest of Judgment, coming on to be heard, after argument by the counsel, is by the Court overruled; and thereupon it is demanded of each defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that, for his said offense, each said defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Ten (10) months to Thirty-two (32) months.

In the District Court of the United States for the District
of Columbia

Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH AND ERMA G. WELCH

AFFIDAVIT IN FORMA PAUPERIS

Now comes the defendants Wallace H. Welch and Erma G. Welch who are citizens of the United States and because of their poverty they are unable to prepay the costs of prosecuting their appeal or give security for same and ask leave to proceed in forma pauperis.

WALLACE H. WELCH.

Wallace H. Welch.

ERMA G. WELCH.

Erma G. Welch.

Subscribed and sworn to before me this 9th day of November, 1942.

LILLIAN A. TRAMMELL,

Notary Public, D. C.

ORDER OF COURT

It is this 9th day of November, 1942, ordered that the above named defendants be and they hereby are permitted to prosecute their appeals to conclusion without prepayment of costs or fee.

JENNINGS BAILEY,

Justice.

Service acknowledged this 9th day of November 1942.

BERNARD MARGOLIUS,

Asst. U. S. Atty.

Filed Nov. 9, 1942. Charles E. Stewart, clerk.

In the District Court of the United States
For the District of Columbia

ASSIGNMENT OF ERRORS

Filed Nov. 14, 1942

* * * *

Criminal No. 70287

The Court erred:

In refusing to declare a mistrial after it was shown that the prosecuting and police officials had been guilty of misconduct in furnishing the newspapers with the criminal record of the defendant Erma G. Welch after such evidence had been excluded from the jury.

In refusing to direct a verdict for both defendants on the second count of the indictment.

In denying motion for new trial.

In denying motion in arrest of judgment.

In imposing sentence.

JAMES J. LAUGHLIN,
Counsel for the defendants.

I certify that I have this day mailed copy of this assignment of errors to Bernard Margolius, Esq. Assistant U. S. Attorney.

JAMES J. LAUGHLIN.

This the 13th day of November, 1942.

In the District Court of the United States
for the District of Columbia

ORDER EXTENDING TIME WITHIN WHICH BILL OF EXCEPTIONS MAY
BE SETTLED

Filed Dec. 16, 1942

* * * *

Criminal No. 70287

Upon motion of the United States Attorney and for good cause shown it is by the Court this 16th day of December, 1942.

Ordered that the time within which bill of exceptions may be settled be and the same hereby is extended to the 11th day of January, 1943.

By the Court:

JENNINGS BAILEY,
Justice.

District Court of the United States
for the District of Columbia

Monday, January 11th, 1943

The Court resumes its session pursuant to adjournment: Mr. Justice McGUIRE, presiding.

* * * * *

Criminal No. 70287

By JUSTICE ADKINS.

Now comes here the defendants, Wallace H. Welch and Erma Welch, by their attorney, James J. Laughlin; whereupon the Bill of Exceptions of said defendants herein is submitted, settled, signed, made of record and filed this 11th day of January, 1943.

In the District Court of the United States
For the District of Columbia

Criminal No. 70287

UNITED STATES

v.

WALLACE H. WELCH, ET AL.

DESIGNATION OF RECORD

The clerk will please prepare the record in the above entitled cause and include therein the following:

1. Indictment.
2. Minute of plea.
3. Affidavit of James J. Laughlin in support of oral motion for mistrial with exhibits.
4. Minute of verdict.
5. Motion for new trial.

- 6 Motion in arrest of judgment.
7. Affidavit of Budd E. Nolan
8. Judgment.
9. Assignment of errors.
10. This designation of record.
11. Clerk's certificate.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendants.

I certify that I have this day mailed copy of this designation of record to Bernard Margolius, Assistant U. S. Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 9th day of November, 1942.

Accepted—subject to additions.

BERNARD MARGOLIUS.

This designation of record approved:

JENNINGS BAILEY,
Justice.

Filed Nov. 9, 1942. Charles E. Stewart, Clerk.

In the District Court of the United States for the
District of Columbia

Holding a Criminal Term

Criminal No. 70,287

UNITED STATES OF AMERICA
vs.

WALLACE H. WELCH AND ERMA WELCH

Filed Jan. 11, 1943. Charles E. Stewart, clerk.

BILL OF EXCEPTIONS

Be it remembered that this cause came on for trial on September 22, 1942, before the Honorable Jennings Bailey, in the District Court of the United States for the District of Columbia, holding Criminal Court Number One. The United States was

represented by Mr. Bernard Margolius, Assistant United States Attorney, and the defendants were represented by Mr. James J. Laughlin. The jury, being satisfactory to counsel for both sides, were duly sworn to try the cause. Opening statements were made on behalf of the Government and the defendants by their respective counsel.

To maintain the issues on its part joined the United States introduced the following evidence and the following-named witnesses who testified as indicated:

Miriam Naomi Eirich, being first duly sworn under oath, testified that she was born in Johnstown, Pennsylvania, on March 19, 1922; that her father still resides in that place; that her mother died about four years ago. She further testified that she first came to Washington on May 2, 1942, from Johnstown upon receipt of a letter from the Veterans Bureau in which she was informed that she would be notified by telegram within four days to report for duty. She knew the defendant Erma Welch, who was then living in Washington, because the defendant's mother lived just a block away from the witness in Johnstown. The witness wrote to the defendant inquiring about a room in Washington and received a reply that she, the defendant, had one available. Thereupon, she came to Washington on May 4, 1942, with her father who remained with her at the Welch apartment. Her father returned to Johnstown the following day. At this particular time Wallace H. Welch, the other defendant in the case and Erma Welch's husband, was in a veterans' hospital in Virginia. While the witness was waiting for the expected telegram notifying her to report for work at the Veterans Bureau, she got a job as a waitress at Howard Johnson's Restaurant on Wisconsin and Western Avenues.

The witness further testified that the Welchs' apartment had two rooms, composed of a bedroom containing a double bed and a studio couch, and a kitchen, as well as a bathroom. Witness slept in the bed with defendant Erma Welch until her husband returned from the hospital, when she slept on the studio couch with a screen around her.

In the first part of June the witness started working at the Veterans Bureau and worked at Howard Johnson's on the

week ends. Defendant Wallace Welch returned home from the veterans' hospital about this time. While the witness was living with the defendants, both of them encouraged her to become a prostitute. They told her that she could earn extra money by having dates after office hours with men and that they, the defendants, would see to it that she was taken care of so that nothing would happen to her. The witness told the defendants that she would not do anything like that, to which the defendants replied that in order to get along in Washington she would have to and that wherever she went to live she would find that in order to get along she would have to make dates with other men and earn extra money. The witness on several occasions told defendants that she would rather go back to Johnstown and make less money if it was necessary to engage in prostitution in order to get along in a place like Washington. The defendants insisted that the witness, for her own good, would have to take up prostitution, stating that most of the government girls earned extra money at night doing these things. The defendants told the witness that they knew of a house near Dupont Circle where they would take her to get dates if she would go with them. When the defendants found that they could not persuade her in this way they asked the witness to go to Florida with them, stating that it would not cost the witness any money, as they could take her to places where she could make a lot of money having relations with men and that they would see that she was taken care of. During the period of time when the defendants were persuading the witness to engage in prostitution the defendants gave physical exhibitions in the presence of the witness to show her how these things were accomplished. They were both nude when giving these exhibitions.

On one occasion when Mrs. Welch was absent defendant Wallace Welch came to the bed where the witness was sleeping and removed her pajama pants and was in the act of having intercourse when she was awakened. This was the first time such a thing had ever happened to the witness. Shortly thereafter Mrs. Welch returned to the house, and the witness told her what had happened. Mrs. Welch prepared a solution and assisted her in taking a douche. At that time both defendants

told the witness that she would have to do these things in order to get along.

Witness testified further that on Saturday, June 27th, upon informing some girl friends as to what was taking place, these girls would not let witness go back to the Welchs'. She stayed at the room of one of these girls. The witness testified that she had not complained to the authorities up until that time because the defendant Wallace Welch threatened to have her done away with if she talked, stating that he could get plenty of men to do away with her for \$5 or \$10. He further told the witness that if she complained to anyone it would be her word against the word of the two defendants and that no one would believe her. The witness further testified as a reason for not complaining that she had tried awfully hard to get a Government job, which she considered a privilege, and that she was afraid that if this matter came to the attention of her superiors she would be discharged. After the witness left the home of the defendants and on the afternoon of July 21st, defendant Wallace Welch came to the Veterans' Bureau and told a guard that he wanted to see her. The witness thereupon advised her supervisor, who went along with the witness to see the defendant Wallace Welch, who told the witness that he had some letters for her at his home. The supervisor told the defendant that he should send the letters to the witness at the Veterans Bureau, to which the defendant answered that if she wanted them the witness would either have to come for them or else send a police officer after them. On this same day the witness made a complaint to the police.

Upon cross-examination witness testified that she never consented to any act of intercourse by the defendant Wallace Welch; that she did not telephone her father in Johnstown, Pennsylvania, about what was happening because she was afraid of Mr. Welch and further, knowing her father, she was afraid of what he might do about the matter; that she did not complain to the police prior to the time that she did because she was afraid of defendant Wallace Welch. She admitted that telephones were available to her to make a call. Witness further testified on cross-examination that after Wallace Welch had attempted to engage in intercourse she continued

to live at the home of the defendants and occupied the same bedroom with them, stating that there was a screen around her bed closing out the view. She testified further that she had gone to school for twelve years but did not call her Senators or Congressman because she did not know the procedure; further than the house in which the defendants sought to place her was near Dupont Circle, but that she did not know the address and had never been taken there; that she was never introduced to any men and there was no discussion relative to sharing her earnings with the defendants. The witness emphatically denied that she had ever had an abortion performed upon her at Johnstown, Pennsylvania. Upon further cross-examination the witness testified that she had never had intercourse in her life and that she had several brothers, one of whom was in the Navy, stationed at Pearl Harbor on December 7, 1941, another in the Army overseas, and a third in the Navy on convoy duty in the Atlantic.

CLARE M. GUMAER testified that she was employed at the United States Veterans' Bureau and was the complainant's supervisor; that on Tuesday, July 21, 1942, defendant Wallace Welch came to the Bureau and requested to see the complainant. Complainant thereupon became frightened and nervous and upon her request several guards of the building were obtained to accompany them on the visit. When they went downstairs to see the defendant he asked the complainant what time she would get off work and what entrance she would leave from and stated that he wanted to take her back to his home. The witness thereupon told the defendant Wallace Welch that the complainant was not going back. After some discussion defendant stated that there were some papers and belongings of the complainant at his home and that if she did not come back to get them herself she would have to send a police officer.

Thereupon the Government rested. A motion for directed verdict was made and overruled, to which an exception was duly noted.

Thereupon the defendants called on their behalf the following-named witnesses, each of whom was duly sworn under oath and testified as indicated:

Bessie Wheeler testified that she occupied a room in the house in which the defendants lived; that she was living there while the complaining witness was there and that, while she was not acquainted with the complaining witness, she saw her from time to time, but never heard her make a complaint, and knew of no disturbance or disorder.

Nora Evans testified that she was the landlady of the premises occupied by the defendants and that she lived in a building immediately to the rear of the house in which defendants had their rooms; that she knew the complaining witness and that she never made any complaint to the witness; further the witness knew of no disturbance or disorder in the premises.

Dr. Raoul Wilkerson testified that he was a physician pre-interning at Gallinger Hospital and that he made an examination of the complaining witness in July 1942 at the request of the police department; that upon such examination he could insert two fingers, but could not say whether or not the complaining witness had ever had sexual intercourse.

Victor Guillerman testified that he was employed by the Veterans Bureau and that the records of the Bureau showed that the defendant, Wallace Welch, was a war veteran and was undergoing treatment in a veterans hospital at Kecoughton, Virginia, in the early part of May 1942. The witness read from the records as to the ailments for which the defendant was being treated.

Wallace H. Welch, the defendant, thereupon took the witness stand in his own behalf and testified that he knew the complainant and her family in Johnstown and that it was the understanding that Miriam was to remain with him and was to occupy the room of the defendants only until she could find accommodations elsewhere. He testified that he never bothered the complaining witness; that he had never had improper relations with her; that he did not suggest that she enter a life of prostitution or make dates with men; that he never suggested that she enter a house on Dupont Circle or at any other place. He further testified that the complaining witness told him that she had a boy friend in Johnstown, Pennsylvania, with whom she had been intimate, as a result of which she became pregnant and had an abortion performed

and that by reason of this experience "she would make all men suffer." This apparently was the reason why she was bringing these charges against the witness and his wife. Witness further testified that he went to the Veterans Bureau on Tuesday, July 21st, some weeks after the complaining witness had left his room, to talk to the complaining witness about a letter which she had written to someone in Johnstown. He did not speak to the complaining witness, but talked instead with her supervisor. The witness further testified that when he was arrested by Officer Blick he was not told the reason for his arrest.

Defendant Erma G. Welch did not testify. Thereupon the defendants rested. A motion for directed verdict was made and overruled, to which an exception was duly noted. The court recessed until the following morning at 10 A. M.

When the court reconvened at the appointed time, counsel approached the bench and conferred out of the hearing of the jury as follows:

Mr. LAUGHLIN. There is a matter I desire to bring to your attention and that is this: In the Washington News of yesterday and the Washington Herald of this morning there appears a newspaper article that in my judgment is so prejudicial that it now prevents the defendants from obtaining a fair trial. The articles set forth the criminal record of Erma Welch who had not taken the stand. As to the article in the News I talked with the reporter on the telephone last evening. He said that he obtained the information from Officer Blick. Blick has not testified but has been in court in each day and several times I observed him in conference with the newspaper men.

The COURT. It is a serious matter. But I believe it is a matter that should be handled by the District Attorney.

Mr. LAUGHLIN. In view of the circumstances I move that a juror be withdrawn and a mistrial declared.

Mr. MARGOLIUS. I agree that if any juror read the articles that a mistrial should be declared.

The COURT. If any juror has read the article or articles I will not hesitate to declare a mistrial.

Mr. LAUGHLIN. May I get the articles for you but before that is done may the jurors be excused so that they will not know what we are talking about.

Mr. MARGOLIUS. In view of the circumstances I think the jurors should be kept together.

The COURT. The marshal will take the jurors to the jury room until I send for them.

(The jurors were taken to the jury room).

(The papers in question were handed to the court).

Mr. LAUGHLIN. I suggest that a marshal go to the jury room and find out if any of the jurors have copies of the Washington News or the Washington Herald—particularly the Herald since it is a morning paper.

The COURT. Yes, that will be done.

(The marshal went to the jury room and returned to the courtroom with two copies of the Washington Herald.)

The COURT. When the jury returns I will ask the jurors if they have read anything in the papers about this case.

The jury thereupon returned to the jury box. The court thereupon asked the jury whether any of them had read anything in the papers about the case or trial, inquiring particularly as to whether they had read anything in the Washington News or the Washington Herald of that morning. No juror responded. The jurors were further questioned as a group as to whether they had been told about anything in the articles in the papers, particularly any article in the Washington News or the Washington Herald. One juror stated that he was told that there was an article in the Washington News of the day before, but he, the juror, had not been told of its contents and did not read the article. He specifically stated that he did not know what it contained.

Counsel again approached the bench, and out of the presence of the jury defense counsel renewed his motion for mistrial, which was overruled and an exception noted. Defense counsel thereupon asked leave to insert in the record the articles in question, and this was granted.

Thereupon counsel returned to the trial table and the case proceeded. At the conclusion of the opening argument on behalf of the Government, the court stated to counsel that he did not believe that the evidence justified a conviction on the first count of the indictment and that he would direct a verdict on that count. Thereupon counsel approached the bench and a motion for a directed verdict on the second count as to the defendant, Erma Welch, was made. The court overruled the motion, to which an exception was duly noted.

Thereupon the court carefully and fully instructed the jury. The jury deliberated twenty minutes and returned a verdict of guilty as to each defendant on the second count of the indictment. A motion for new trial and a motion for arrest of judgment were filed and argued. Each was overruled and an exception duly noted.

Because the matters and things herein recited are not matters of record, and in order to make the same a part of the record herein, so that the defendants may have their case reviewed on appeal, the Government, by its attorneys, moves the court to sign and seal this, its bill of exceptions, to have the same force and effect as to each of the said exceptions, as though the same had been separately filed and sealed, which motion is granted by the court; and the Government thereupon tenders this, its bill of exceptions, and requests the court to sign and seal the same, which is accordingly done this 11th day of January 1943.

(Sgd.) JESSE C. ADKINS,

Justice.

Service of a copy of the above bill of exceptions is hereby acknowledged this 8 day of January 1943.

JAMES J. LAUGHLIN,
Attorney for Defendants.

I consent to the signing of this Bill of Exceptions.

JAMES J. LAUGHLIN,
Counsel for Defendants.

In the District Court of the United States
for the District of Columbia

Criminal No. 70,287.

UNITED STATES OF AMERICA

vs.

WALLACE H. WELCH AND ERMA WELCH

STIPULATION

It is hereby stipulated by and between counsel for defendant and for the United States that the foregoing Bill of Exceptions is a satisfactory statement of the proceedings which have occurred on the trial of this case.

It is further stipulated that due to the illness of Justice Bailey, the Bill of Exceptions may be signed by Justice Adkins.

BERNARD MARGOLIUS,

Assistant United States Attorney.

(Sgd.) JOHN P. BURKE,

John P. Burke,

Assistant United States Attorney.

(Sgd.) JAMES J. LAUGHLIN,

James J. Laughlin,

Attorney for Defendant.

Filed Jan. 11, 1943. Charles E. Stewart, Clerk.

District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 26, both inclusive, to be a true and correct transcript of the record, according to the designation of record for use on appeal approved by the Court and filed in said cause, and the matter required by Rule IX of the Criminal Appeals Rules of the Supreme Court of the United States and Rule 33 (d) of the General Rules of the United States Court of Appeals for the District of Columbia, in cause

entitled United States vs. Wallace H. Welch, et al., Criminal No. 70287, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of January 1943.

[SEAL]

CHARLES E. STEWART,
Clerk.

By CHAS. B. COFLIN,
Deputy Clerk.

[Endorsed on cover:] No. 8392. Welch vs. U. S. A. United States Court of Appeals for the District of Columbia. Filed Jan. 16, 1943. Joseph W. Stewart, clerk.